

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to changes to special education as required by every student succeeds Act and providing an opportunity for public comment

The Department of Education hereby proposes to amend Chapter 41, “Special Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, the Every Student Succeeds Act, Pub.L. No. 114-95, and federal regulations published at 62 Federal Register 29755 (June 30, 2017).

Purpose and Summary

These amendments are required based on amendments to the Individuals with Disabilities Education Act (IDEA) that were made by the Every Student Succeeds Act (ESSA). On June 30, 2017, the United States Department of Education issued final regulations that incorporated the changes that the ESSA made to the IDEA.

The State Board is proposing these amendments separately from other rule making because these amendments, although required by the ESSA, represent a practice change for many Iowa educators.

Item 1 amends the definition of “regular high school diploma.” This amendment makes clear that a regular high school diploma must be fully aligned to state-required standards. In Iowa’s case, those would be the graduation requirements set forth in Iowa Code section 256.7(26).

Item 2 explains the requirement that all students with disabilities participate in statewide and districtwide assessments, including providing children with significant intellectual disabilities with alternate assessments aligned to alternate academic achievement standards.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Board of Education no later than 4:30 p.m. on March 27, 2018. Comments should be directed to:

Thomas Mayes
Iowa Department of Education
Grimes State Office Building, Third Floor
Des Moines, Iowa 50319-0146
Fax: 515.242.5988
Email: thomas.mayes@iowa.gov
Phone: 515.242.5614

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 27, 2018
10 to 11 a.m.

State Board Room, Second Floor
Grimes State Office Building
East 14th Street and Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **41.102(1)“c”** as follows:

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in 41.102(1)“c”(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1)“c”(1) to (3), the term “regular high school diploma” ~~does not include an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a general educational development credential (GED)~~ means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

ITEM 2. Adopt the following new rule 281—41.160(256B,34CFR300):

281—41.160(256B,34CFR300) Participation in assessments.

41.160(1) General. The state must ensure that all children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. Section 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

41.160(2) Accommodation guidelines.

a. The state (or, in the case of a districtwide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

b. The state's (or, in the case of a districtwide assessment, the LEA's) guidelines must:

- (1) Identify only those accommodations for each assessment that do not invalidate the score; and
- (2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

41.160(3) Alternate assessments.

a. The state (or, in the case of a districtwide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in subrule 41.160(1).

b. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph 41.160(3) "a" must provide for alternate assessments that:

- (1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards;
- (2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and
- (3) Except as provided in subparagraph 41.160(3) "b"(2), a state's alternate assessments, if any, must measure the achievement of children with disabilities against the state's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

c. Consistent with 34 CFR 200.1(e), a state may not adopt modified academic achievement standards for any students with disabilities under Section 602(3) of the Act.

41.160(4) Explanation to IEP teams. The state (or, in the case of a districtwide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

41.160(5) Inform parents. The state (or, in the case of a districtwide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards are informed that their child's achievement will be measured based on alternate academic achievement standards.

41.160(6) Reports. The state (or, in the case of a districtwide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

b. The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

c. The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015-2016.

d. The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

e. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015-2016), and alternate assessments based on alternate academic achievement standards if:

(1) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(2) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

41.160(7) *Universal design.* The state (or, in the case of a districtwide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this rule.